

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9725 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDRIKABEN MOHANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SUNIL C PATEL for the Petitioner.
Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2003

ORAL JUDGEMENT

The petitioner is the wife of the detenu,
Mohanbhai Patel. The husband of the petitioner is
detained as a 'Bootlegger' under the provisions of the

Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for Short). The detention order was passed against the husband of the petitioner on 31st August, 2002. In the grounds of detention, there is a reference about one prohibition case against the husband of the petitioner, which is registered at Sachin Police Station, being Guna Register No.194 of 2002. The said case is dated 30th April, 2002. It is submitted by Mr. Patel for the petitioner that only on the basis of the solitary criminal case, husband of the petitioner is detained under preventive detention. He submitted that there is no question of any public order or breach of public health, as the so-called allegation against the husband of the petitioner is that he is dealing in Beer and Indian Made Foreign Liquor. He also submitted that even on the ground of delay in passing the order from the date of the last incident, the order is required to be set aside.

The learned Advocate for the petitioner relied on the decision of this Court in *Elesh Nandubhai Patel v. Commissioner of Police*, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

"

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the

decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. So. Ramamurthy reported in 1993(2) Suppli SCC 61.

... .."

It is not in dispute that the last offence is registered against the husband of the petitioner on 30.4.2002 and, later on, the petitioner is arrested on 7th May, 2002. Even from that date, there is considerable delay in passing the detention order. Considering the aforesaid aspect of delay in passing the detention order and considering the judgment of this Court, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

28th March, 2003 (P.B. Majmudar, J.)

(apj)